THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24956 OF 2001

ORDER:

The Writ Petitioner claims to be a licence holder under the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966. It is stated that the petitioner has been carrying on fruit business in the Market Yard at Gaddiannaram Fruit Market Yard, Kothapet, Ranga Reddy district by paying the market fees to the Agricultural Market Committee regularly.

It is not in dispute that on the basis of an application made by the petitioner for allotment of a shop in the Market Yard on lease basis, together with deposit of Rs.10,000/-, the respondent - Market Committee on 18.05.1993 allotted a shop bearing No.A/14, Class A, at Gaddiannaram Fruit Market Yard to the petitioner. A lease deed was also executed on 22.05.1993. However, since one M/s Golden Fruit Company, the earlier allottee raised an objection, possession of the said shop was not handed over to the petitioner and when the petitioner made a representation, the respondent by letter dated 19.04.1994, informed the petitioner that the matter will be settled in due course. Thereafter, on repeated requests made by the petitioner, he was orally informed that as and when a vacancy arises he would be allotted a shop on priority basis.

While so, in the month of August/September, 2001 another shop bearing No.A/17 fell vacant. As the request of the petitioner was pending since long and even the deposit of Rs.10,000/- made by him was retained by the respondent - Market Committee, the petitioner made a request on 18.10.2001 to allot him the vacant shop, pending finalization of his claim in respect of shop No.A/14. However, the respondent - Market Committee did not consider his request. Hence, this Writ Petition seeking a declaration that the action of the respondent-Market Committee in not allotting him the vacant shop No.A/17 as arbitrary and illegal, and for a consequential direction to allot the said shop immediately.

On behalf of the 1st respondent-Market Committee, the Person-in-Charge, filed a

counter-affidavit in which the fact that the petitioner had applied for allotment of a shop at Fruit Market Yard, Gaddiannaram and also deposited a sum of Rs.10,000/- towards security deposit has not been disputed. However, it is stated that originally shop No.A/14, of Class A, was allotted to one M/s New Golden Fruit Company and possession was also handed over to it. While so, having found that the said Company was not conducting any business during the relevant period, the allotment was cancelled, and subsequently, the same was allotted in favour of the petitioner-company and a lease deed was also executed. M/s New Golden Fruit Company filed W.P.No.7515 of 1993 questioning the order or cancellation of allotment of shop No.A/14. The said Writ Petition was disposed of by order dated 24.02.2004 directing the Market Committee to give an opportunity of being heard to the petitioner therein i.e., M/s New Golden Fruit Company. The Writ Petitioner herein, was also impleaded as respondent No.2, to the said Writ Petition. Consequent to the said order, M/s Golden Fruit Company continued in possession of shop No.14/A. In the circumstances, the writ petitioner was informed that his request for allotment of a shop was under consideration and whenever vacancy arises, he will be allotted a shop in due course of time on priority basis. So far as shop No.A/17 is concerned, it is stated that the same was allotted to Himachal Pradesh Horticulture Processing Corporation Limited, a Government undertaking organization, since the said shop was reserved and identified for the purpose of conducting direct sale under open auction i.e., where the farmers can directly assemble and sell directly under the supervision of the officials of the Market Committee without the involvement of commission agents, as contemplated under Rule 56 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969, and bye-law Nos.28(3) and 37 of the Market Committee. Hence, the relief prayed for in the Writ Petition for allotment of shop No.A/17 cannot be granted. It is further stated that the petitioner was a partner in another firm viz., Jai Jai Ram Fruit Company, in whose favour shop No.A/3 was allotted and the same was already occupied. It is also stated that since shop No.A/17 was reserved for the purpose of conducting direct sale under open auction in the interest of farmers and since no other alternative arrangements were available to implement direct sale, the petitioner may seek allotment of some other shop out of the 70 shops which were newly constructed over the bidding platforms and were going to be allotted to the remaining fruit commission agents.

One B. Harinath, who claims to be a trader carrying on business in the 1st

respondent-market committee, got himself impleaded as the 2nd respondent to the Writ Petition, and filed a detailed counter-affidavit stating that he has been a licensee under Section 7(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, even much prior to 1983-84, during which period the Fruit Market was at Jambagh. He had shifted from Jambagh to Gaddiannaram along with so many similarly situated traders, who were carrying on business at Jambagh Fruit Market. The 2nd respondent and other traders were not allotted shops even till today. The Writ Petitioner who obtained a licence recently cannot claim any priority over the 2nd respondent and other traders holding licences even prior to the shifting of the Fruit Market to Gaddiannaram. All of them have paid the deposit amount long back for allotment of shops. Their applications are also under consideration for allotment of shops. Hence, the petitioner cannot be assured allotment of any particular shop and the allotment shall be made only in accordance with the guidelines issued by the Government. Even assuming that shop No.A/17 had fallen vacant, the same can be allotted strictly following the Government Orders governing the allotment of shops and the Writ Petitioner cannot claim any priority on the basis of the so called assurance give by the respondent-market committee.

I have heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents.

As can be seen from the material on record, after shifting the Fruit Market from Jambagh to Gaddiannaram Market Yard, the respondent-market committee decided to provide temporary sheds to the commission agents till the entire permanent complex was completed, and accordingly, applications were called for from the interested traders for temporary allotment of shops on rental basis by issuing a circular dated 22.04.1985. On the basis of the applications received, it also appears that the list of allottees were submitted by the sub committee for allotment of shops available in different categories. However, in the meeting of the market committee held on 27.09.1986, it was unanimously resolved to take necessary further steps in terms of the decision of this Court in pending matters.

While so, Hyderabad Fruit Commission Agents Merchants and Traders Association filed W.P.No.11221 of 1986 seeking a direction to the Agricultural Market Committee to cancel the allotment of temporary sheds already made at Gaddiannaram and to make fresh allotment on drawal of lots among the eligible applicants. The said Writ

Petition was dismissed by this Court by order dated 13.10.1986 holding that the market committee has rightly evolved a formula for allotment of sheds on the basis of payment of market fee by the traders. It was also held that the grouping, which was done in the matter of allotment of shops, was in consonance with the situation existing in the Jambagh Market where more than one trader was operating from the same premises. W.A.No.1253 of 1986 filed by the Association against the order in W.P.No.11221 of 1986 was disposed of by a Division Bench of this Court by Judgment dated 17.10.1986 with certain observations for allotment of shops to the eligible members of the Association. When the State approached the Supreme Court by filing Civil Appeal No.1568 of 1987, the same was disposed of by Judgment dated 31.07.1987 holding that the proper basis for such allotment should be that the dealers applying for allotment of sheds should actually be carrying on the business in wholesale fruits on the date of the allotment, and accordingly, the market committee was directed to adopt the said procedure while allotting the shops.

Having regard to the aspects noted above and having heard the learned counsel for both the parties in detail, it appears that the market committee has been consistently following the procedure for allotment of shops in the Market Yard on the basis of the payment of market fee by various traders. The same was taken note by the Supreme Court in Civil Appeal No.1568 of 1987 and it was held as under:

> "…….The proper basis for such allotment should be that the dealers applying for allotment of sheds should actually be carrying on the business in wholesale fruits on the date of the allotment. We modify the judgment accordingly and direct that the Market Committee shall in making the allotment adopt this as the basis"

May be that the Writ Petitioner made a deposit of Rs.10,000/- which still remained with the market committee. However, it appears that similar deposits have also been made by the other traders, who requested for allotment of shops. Hence, the date of application or the date of deposit made by the traders cannot confer any right of priority or preference for allotment of shops. Nothing has been placed before this Court to show that the petitioner was assured of any priority on the ground that shop No.A/14, which was earlier allotted, could not be handed over to it.

Admittedly, the shop allotted to the petitioner was only A/14. Since the petitioner was not put in possession of the said shop, now he has come up with a

claim for allotment of shop No.A/17 on priority basis. The said claim of the petitioner for allotment of shop No.A/17, which was admittedly reserved by the market committee for conduct of direct sale under open auction, is without any basis.

In the absence of any material to show that the petitioner acquired any right much less legal right to claim allotment of shop No.A/17, no Mandamus can be issued compelling the respondents to allot shop No.A/17 to the petit[ioner. In stead, I deem it appropriate to dispose of the Writ Petition with a direction to the 1st respondent to consider the request of the petitioner along with other eligible traders following the procedure prescribed in the bye-laws of the Market Committee strictly in terms of the order of the Supreme Court in Civil Appeal No.1568 of 1987.

The Writ Petition is accordingly disposed of. No costs.

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(G. ROHINI, J.)

14th February, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24956 OF 2001

14th February, 2006.

Between:

Usha Fruit Company, represented by

its proprietor – R. Ashok Kumar. .. Petitioner.

And

The Agricultural Marketing Committee,

represented by its Chairman, Gaddiannaram

Market Yard, Gaddiannaram, Kothapet,

Ranga Reddy District and another. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

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